

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

IN RE:

FLOYD, BENJAMIN ADAM,

Debtor,

Case No. 23-10158 SAH

Chapter 7

UNITED STATES TRUSTEE,

Plaintiff,

vs.

FLOYD, BENJAMIN ADAM,

Defendant.

Adversary No. 23-01030 SAH

**UNITED STATES TRUSTEE'S MOTION TO DISMISS ADVERSARY PROCEEDING
WITH NOTICE OF OPPORTUNITY OF HEARING AND BRIEF**

NOTICE OF OPPORTUNITY FOR HEARING

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document. If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102 no later than **14 days** from the date of filing of this request for relief. You should also serve a file-stamped copy of your response or objection to the undersigned movant/movant's attorney [and others who are required to be served] and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice. **The 14-day period includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).**

Plaintiff, United States Trustee (“UST”), requests an Order dismissing the UST’s Adversary Proceeding against the Debtor/Defendant, Benjamin Adam Floyd (“Floyd”) under FED. R. BANKR. P. 7041. In support of this motion, the UST states:

A. Facts.

1. The Complaint [Adv. Doc. 1] (the “**Complaint**”) objecting to Floyd’s discharge under 11 U.S.C. §727(a) was filed July 22, 2023.

2. On September 15, 2023, this Court entered an Order approving Floyd’s waiver of discharge under 11 U.S.C. §727(a)(10) in his underlying bankruptcy case (the “**Order**”). [Bankr. Doc. 59]. The time to appeal that Order expires September 29, 2023.

3. The Complaint is moot now that Floyd’s waiver has been approved by this Court; consequently, this Adversary Proceeding should be dismissed upon the expiration of the time to appeal the Order, on the condition that no appeal is made.

4. FED. R. BANKR. P. 41, which adopts FED. R. CIV. P. 41, provides that a “complaint objecting to the debtor’s discharge shall not be dismissed at the plaintiff’s instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper.”

5. The UST will give notice of this Motion to all parties in interest set forth on the mailing matrix for Floyd’s bankruptcy estate. The UST contends there are no terms or conditions necessary for dismissal of the Complaint given Floyd’s waiver of discharge.

6. The chapter 7 trustee, John Mashburn, is aware of this dismissal request and the UST has permission to represent that he has no objection to dismissal of this adversary proceeding.

7. The UST reserves the right to withdraw this Motion if the Order does not become a final, non-appealable Order.

B. Requested relief.

8. Considering the above, and subject to the Order becoming a final, non-appealable Order, the UST requests that this Court enter an Order dismissing the UST's Complaint objecting to Floyd's discharge; and for such other and further relief as the Court finds just, equitable and proper.

Respectfully submitted,

ILENE J. LASHINSKY
UNITED STATES TRUSTEE

MARJORIE J. CREASEY
ASSISTANT UNITED STATES TRUSTEE

s/ Jeffrey E. Tate

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CERTIFICATE OF MAILING

This is to certify, under penalty of perjury, that on September 18, 2023, the above and foregoing motion was mailed, postage prepaid, to those parties in interest set forth on the mailing matrix accompanying the original motion filed with this Court:

s/ Jeffrey E. Tate

Jeffrey E. Tate, OBA #17150